IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1462 of 2004

to

SPECIAL CIVIL APPLICATIONNo 1474 of 2004
with
SPECIAL CIVIL APPLICATION NO 1768 TO 1778 OF 2004 WITH
SPECIAL CIVIL APPLICATION NO 1668 OF 2004

Date of Decision: 23/4/2004

UNION OF INDIA THROUGH GENERALMANAGER WESTERN RAILWAY

Versus

RAMKRIPAL JAGANNATH EX KHALASI OF THE CHIEF

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the petitioners MR.Adv. MUKESH A PATEL

For the respondent No.2 MR.Adv. KK SHAH

PER: H.K.RATHOD, JUDGE :-

1. Heard learned Counsel Mr. Mukesh A. Patel for the Union of India and others and Mr. K.K. Shah, learned Counsel for the workmen. In these petitions, order passed by the Central Administrative Tribunal, Ahmedabad Bench in OA NO. 881 of 1999; 184; 185; 186; 195 to 203 of 2000 dated October 22, 2003 is under

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Whether reporters of Local Papers may be allowed to see the Judgment?

challenge. The Tribunal has set aside the order of removal from service and directed the railway administration to reinstate the workmen of all OAs except that of OA No. 198 of 2000 with immediate effect with 50 per cent back wages. The period from the date of removal from service till the date they are reinstated was ordered to be counted for the purpose of continuity in service for all purpose, with costs of Rs.2000.00 for each OA. Since the applicant Jagdishchandra D. of OA No. 198 of 2000 has died during the pendency of the OA, it was ordered that his legal representatives shall be entitled to all the benefits accruing in view of the order. Said order is challenged by the petitioner Union of India in so far as it relates to the directions of reinstatement with 50 per cent back wages and the workmen have challenged the said order in so far as it relates to refusal of the back wages to the extent of 50 per cent. Brief facts of the present group of petitions are as under:

2. All the workmen were initially engaged as casual labourers between the years 1983 to 1987; they were conferred with the temporary status and were subsequently regularized. However, after they were regularized, on receiving some intimation that they had obtained engagement as casual labourers on the basis of fake labour cards, the Railway Administration initiated an enquiry against them; charge sheets were issued to all of them in April, 1988. Inquiry proceeded after service of the charge sheet and the Inquiry Officer in his report held that the charges levelled against the workmen were proved and they were guilty of serious misconduct. The disciplinary authority accepted the findings of enquiry officer and imposed punishment of removal from service on all the workmen. The departmental appeals filed by the workmen were rejected. Therefore, orders of removal were challenged by them before the Central Administrative Tribunal by filing OA No. 69 of 1993; 254 of 1993; 255 of 1993 etc. The Tribunal, vide its order dated July 16, 1998, accepted the contention of the workmen that the refusal to call four witnesses for examination by the Enquiry Officer has resulted in serious prejudice to the defence of the workmen. Therefore, orders of removal were set aside by the tribunal and the railway administration was directed to reinstate the workmen in service as early as possible. Under the said order, no back wages were awarded by the tribunal for the interim period from the date of removal till the date of the

orders passed by the tribunal. Said orders of the tribunal were challenged by the railway administration before this Court by filing special civil application no. 7942 to 7955 of 1998. This Court disposed of the said petitions by order dated April 9, 1999. Relevant observations made by this Court in the order dated April 9, 1999 are reproduced as under:

> "10. For the foregoing reasons, in our opinion, all the petitions deserve to be partly allowed. So far as the reinstatement is concerned, the order is not disturbed and the direction is confirmed. The authorities will reinstate all the respondent workmen on or before 30th June, 1999. So far as closing and dropping of enquiry is concerned, it would be open to the railway administration to hold inquiry after following the requirements of law and observing the principles of natural justice, if the Railway administration so wishes.If such inquiry is proceeded with, it will be disposed of as expeditiously as possible, preferably before 31st December, 1999. The respondents workmen would also cooperate with the said inquiry."

3. Thus, while disposing of the petitions, it was kept open by this Court for the Railway Administration to hold inquiry after following the requirements of law and observing the principles of natural justice, if the Railway administration so wishes, if such inquiry is proceeded with, it was observed that it will be disposed of as expeditiously as possible, preferably before 31st December, 1999. This Court has not disturbed the relief of reinstatement and has confirmed the same. Pursuant to the said directions issued by this court, workmen were reinstated in service.

4. The Railway administration, considering the observations made by this court, took decision to continue with the enquiry against the workmen and fresh enquiry officer was appointed. The inquiry started on September 16, 1999. The Enquiry Officer submitted his report to the disciplinary authority. The disciplinary authority, on acceptance of the report submitted by the inquiry officer, imposed punishment of removal from service by order dated December 29, 1999. Meanwhile, the workmen had approached the Central Administrative Tribunal by filing Original Applications on December 24, 1999 complaining about non observance of the principles

of natural justice by the inquiry officer. The workmen had also complained about the non observance of the directions issued by the tribunal and this court and flouting the orders of this Court by the inquiry officer. By way of interim relief, it was prayed to restrain the disciplinary authority from passing the order of punishment. The tribunal refused to grant any interim relief as prayed for by the workmen. Subsequently on December 29, 1999, orders of punishment were issued against all the workmen and the departmental appeals preferred on November 11, 2000 against the order of removal were also rejected and, thereafter, aforesaid original applications were amended by the workmen. It was contended by the workmen before the tribunal that the inquiry officer as well as the disciplinary authority have again proceeded with the inquiry in the same manner and violated the observations of the tribunal and this court by denying the prayer of the workmen to cross examine four witnesses and, therefore, the railway administration violated the principles of natural justice.

5. Before the tribunal, it was the contention of the railway administration that in view of the directions of this court, inquiry against the workmen had been completed within the time framed and punishment orders were issued on December 29, 1999. Charges levelled against the workmen of acquiring the service in the railway workshop at Dahod on the basis of forged casual labour cards were established in the inquiry and therefore, disciplinary authority issued fresh penalty order of removal from service against the workman. It was admitted by the railway administration that the request was made by the workmen to call four witnesses but they were not examined by the railway administration on the ground that they were not cited as a witnesses in the charge sheet and they were not relevant in the enquiry. It was also admitted by the railway administration that the workmen had given names of the witnesses for cross examination on October 4, 1999 but they were not cited in the charge sheet and as per the rules, inquiry officer has jurisdiction to decide as to how and in which manner the defence is helpful in DAR Case to the workmen. It was also contended by the railway administration that the inquiry officer was not convinced with the justification given by the workmen and, therefore, the request of the workmen for calling said four witnesses for their cross examination was not accepted by the railway administration. It was also contended that the refusal to call such witnesses for their cross examination by the workmen has not resulted

into breach of principles of natural justice and the inquiry officer has acted in accordance with the rules. Referring to para 19(a) and 19(b) of the amended OA, it was contended by the railway administration that how and in which manner their defence witnesses would be helpful in their cases, justification submitted by the workmen in that regard was not acceptable to the inquiry officer and, therefore, said request of the workmen was rejected by the inquiry officer. It was also clarified by the railway administration that if the electrification department has reinstated some similarly situated casual labourers, same policy cannot be adopted by the railway administration as the railway electrification department is different organization and mistake committed in one case cannot be allowed to be repeated.

6. The tribunal, after considering the averments on record made by the parties and oral submissions made before it, passed order on October 22, 2003. The tribunal recorded conclusion that the Railway administration has committed breach of the principles of natural justice in not examining the four witnesses whose names were supplied by the workmen. The tribunal also rejected the request of the railway administration to remand the matters. It was held by the tribunal that the non examination of the said four witnesses has vitiated the inquiry and the workmen were placed in a pitiable condition. It was also observed by the tribunal that the observations made by the tribunal in the earlier round of litigation as well as the observations made by this Court in the judgment in earlier petitions were also violated by the railway administration.

7. Learned counsel Mr. Patel for the railway administration has placed the original record for our perusal. Learned counsel Mr. Shah for the workmen has also placed earlier orders of the tribunal and the letter dated April 8, 1994 of the General Manager (P) Western Railways, representation of the workmen and the copy of the charge sheet for our perusal.

8. Learned counsel Mr. Patel contended before us that the tribunal has committed error in holding that the inquiry was vitiated on the ground of non examination of four witnesses. He also submitted that the said four persons were not shown as a witnesses in the charge sheet. According to him, the statements of said four persons were not relevant. No material was utilized from said four persons to frame the charge sheet against the workmen. He also submitted that save and except the non examination of the said four witnesses, there was no

challenge to the existing decision and the procedure adopted by the inquiry officer. According to him, because of the Vigilance Inquiry, it was found from the record that the labour cards which were issued to the workmen were fake and were not tallying with the register maintained at Dahod by the Railway Administration. Therefore, as a consequence of the vigilance inquiry, it was found that the workmen obtained fake labour cards, on that basis, workmen were appointed by the authority. They were therefore served with the charge sheets and after completion of the departmental inquiry, orders of punishment were issued as the charges levelled against them were proved. He also submitted that for the demand of the workmen to cross examine the four persons, no justification was given by the workmen. It was also his submission that if the inquiry officer has not accepted the request made by the workmen, then, it was open for the workmen to examine said four persons as the witnesses for the workmen but that was not done by the workmen. According to him, the inquiry officer has given reason for not accepting the request of the workmen; there was other enough material on record for proving the charges levelled against the workmen. Except the denial of cross examination of the said four officers, rest of the part of procedure and the findings given by the inquiry officer are not challenged by the workmen. If any mistake has been committed by the railway authority earlier, same cannot be allowed to be perpetuated and it can be rectified by the railway administration. Out of four officers, one officer Mr. P.D. Mishra has died and against one Head Clerk, departmental inquiry was initiated and he was punished by issuing order of reduction in rank and said Head Clerk has now retired from service. Therefore, it was his submission that the tribunal was in error in coming to such conclusion. According to him, the tribunal ought to have examined the question as to whether the examination of four persons was in fact necessary or not. He also submitted that the workmen admitted that the labour cards were not valid. It was his submission that the contentions raised by the railway administration its written statement as well as the additional written statement were not dealt with by the tribunal.He made reference of one affidavit dated 8th January, 1990 and submitted that the labour cards were received by the workmen after making payment of Rs.10,000.00 out of which Rs.8000.00 were paid towards the Railway Minister's Fund and Rs.2000.00 were paid towards the administrative work. The original labour cards were not given to the workmen by Mr. Mishra He also submitted that in inquiry, the workman admitted that such affidavit was made by him and, therefore, there is

no need to examine said four persons. Therefore, it was his submission that the tribunal has committed error in holding that the non examination of said four persons has vitiated the inquiry.

9. Learned counsel Mr. Patel cited the following decisions before this Court:

(1) Government of WB versus Tarun K. Roy and others [(2004) 1 SCC 347].
(2) Avinash Nagra versus Navodaya Vidyalaya Samiti and others [(1997) 2 SCC 534] which is relating to dispensing with regular enquiry and denial of cross examination.
(3) Addl. District Magistrate (City) Agra versus Prabhakar Chaturvedi and anotehr [(1996) 2 SCC 12] which is relating to the admission of the delinquent voluntarily admitting in writing that due to carelessness and fault he could not deposit in the Post Office Account of the employees the amount received by him for this purpose from the employer's office.
(4) State of UP and others versus Ramesh Chandra Mangalik [2002) 3 SCC 443]
(5) Chandrarama Tewari versus Union of India (Through General [1987 (Supp) SCC 518] which is relating to departmental inquiry, enquiry procedure, supply of documents, documents mentioned in memo of charge but neither relevant to charge nor referred to nor relied upon by the authorities nor necessary for cross examination.It was held that non supply of such a document is not violative of the principles of natural justice and not violative of the proceedings.

10. Learned advocate Mr. K.K. Shah for the workmen supported the decision of the Tribunal in so far as it relates to reinstatement but it was his grievance that the tribunal has not given any reason for denying 50 per cent of the back wages. He submitted that there is no discussion in the body of the order for denying part of the back wages. No justification has been pointed out by the tribunal. According to him, it is arbitrary; quasi judicial authority must give reason for denying the relief of back wages. He also submitted that the back wages for the earlier period from 1992 to 1998 were not pressed by the workmen and, therefore, were not granted. He also submitted that the original labour cards were not produced on record before the inquiry officer and unless such original labour cards are produced on the record before the inquiry officer, whether it bears the

signature of any authorized officer or not can be examined only if such labour cards in original produced and the authority who issued such cards is examined before the inquiry officer but in the entire proceedings against each of the workmen, relevant original labour cards were not produced by the railway administration and, therefore, according to him, in absence of the original labour cards, charges levelled against the workmen that they obtained fake labour cards cannot be established. He also submitted that by making cross examination of the said four persons, the workmen would have been able to establish the source of labour cards, to establish that such labour cards were obtained by them not from any other source but were issued by the authorized officer of the railway administration and therefore, the workmen were justified in raising demand for cross examination of the said four persons and the inquiry officer was not justified in rejecting such request and such rejection has deprived the workmen from establishing the source of labour cards. According to him, the affidavit dated January 8, 1990 is not an admission of the workman but it was an admission of the fact that the original labour card was issued by one of the officers amongst four after making payment of Rs.10.000 towards railways Minister's fund and the administrative fund.He specifically submitted that the charge was not admitted by the workmen. He also submitted that right from the stage of charge sheet till the stage of appeal, nowhere, the workmen had admitted the charges levelled against them. At this juncture, it was asked by this court to Mr. Patel, counsel for the Railway administration as to whether he is able to submit that the charges were admitted by the workmen from the stage of charge sheet till the stage of appeal. He answered that the charges levelled against the workmen were not admitted by the workmen at any stage. Then, the Court asked Mr. Patel as to whether the Railway Administration is prepared to produce the original labour cards in respect of each workmen before us or not and whether the original labour cards in question were produced and proved before the inquiry officer or not. He fairly submitted that the original labour cards were not produced and proved before the inquiry officer and further, the railway administration is not able to produce the original labour cards before us. Mr. Shah, learned counsel for the workmen submitted that earlier, departmental inquiry was vitiated and opportunity was given to the railway administration to hold fresh inquiry if desired by the railway administration, then whatever earlier record of departmental inquiry has gone and no evidentiary value thereof remains and in such

circumstances, the railway administration has to prove the charges by leading fresh and proper evidence against the workmen. He also submitted that this court has partly confirmed the earlier orders of the tribunal by confirming the reinstatement and remanded back to hold fresh departmental inquiry in accordance with the principles of natural justice but the same defect has remained again. He also submitted that from 1984 till this date, more than 20 years have passed and poor labourers are facing one by one inquiry without any end and during the interim period, one workman Jagdish K.Mahavat who was working in the workshop at Dahod Railway committed suicide. According to him, poor casual labourers are fighting legal battle against the giant organization since last more than 20 years, therefore, in such circumstances, the tribunal was right in not remanding the matter back to the railway administration. According to him, the person who had issued labour cards under his signature was not examined or cross examined and it amounts to denial of effective and reasonable opportunity to the workmen and it has deprived the workmen from establishing the source of such labour cards and, therefore, it was violative of the principles of natural justice and, therefore, the tribunal was right in holding that this has vitiated the inquiry. He relied upon one decision of the apex court in Indian Railway Construction Co. Ltd. versus Ajay Kumar [All India Service Law Journal VIII 2003(2) page 334]. As per the facts of the said decision, the respondent was dismissed from service without enquiry on plea that assaulting the officer was a grievous offence, he continued threaten the witnesses who will be scared to give evidence, he had lost confidence in administration. It was held by the apex court that reasons recorded were based on presumption conclusions having no basis and hence dispensing with enquiry was wrong. In that case, the matter was not remanded for enquiry by the apex court. Relying on the said decision, it was submitted by Mr. Shah that the tribunal was also justified in not remanding the matter back to the railway administration.

11. He relied upon the decision of the apex court in APSRTC versus K. Bajjanna [2002 AIR SCW 2756] wherein the apex court granted similar relief which was granted in favour of other similarly situated workmen in respect of the workmen. He relied upon the decision in Sher Bahadur vs. Union of India and others [2002 SCC (L&S) 1028] and submitted that in the said matter, the apex court examined similar issue which is applicable to the facts of this case. In the said matter, apex court set aside the order of dismissal on the ground that

sufficiency of evidence is necessary for existence of some evidence which links the charged employee with the misconduct alleged against him.

12. Mr. Shah also drew our attention to the fact that on April 8, 1994,in similar cases of 62 casual labourers who allegedly secured employment on the basis of fake card as fresh casual labour wherein the General Manager of the Railway Authority observed that 'six years have passed and I see no point in trying to dis-engage these casual labourers at this distant date. It is only natural that since they have secured employment through wrongful means, they should not be eligible for benefit of service as others who have been engaged on genuine grounds. In the circumstances, their seniority should be fixed below all the other casual labourers. ' By drawing our attention to the letter dated April 8, 1994, he submitted that in respect of 62 casual labourers similarly situated, no action was initiated and they were engaged by the railway authority, therefore, now, after the order of the tribunal in the second round of litigation, no further fresh inquiry can be initiated against the workmen. Therefore, tribunal was right in rejecting such plea of the railway administration. He also submitted that one such opportunity was given by this Court to the Railway administration but that was not effectively used by the railway administration and defect had remained.

He placed reliance on the decision in Union of India versus Madhusudan Prasad [(2004) 1 SCC 43] and submitted that the workmen are entitled for full back wages as the railway administration has not followed the principles of natural justice, therefore, order of removal were set aside and the workmen are entitled for full back wages for the intervening period.

13. Mr. Shah submitted that the case of 62 casual labourers is relating to railway electrification department and the case of the present workmen is also relating to the establishment of railway and, therefore, the railway administration was not justified in taking the different stand. He submitted that the decision taken by the General Manager being the policy decision, the railway administration ought to have followed the same since the railway authority is one and the adoption of different policy by the railway is amounting to discrimination amongst equal in equal circumstances.

No other submissions were made either by Mr. Patel or Mr. Shah before us. No other decisions were

cited at the bar except those referred to above.

14. The submissions made by the learned counsel for the parties have been considered by us. We have also perused the orders made by the tribunal and the original record placed by Mr.Patel before us. We have also perused the other relevant orders of the tribunal produced along with the petition. We have considered the decisions cited at the bar by the learned counsel for the parties.

15. In this group of petitions, real question is that the request made by the workmen for giving them opportunity of cross examination of four persons from whom labour cards were obtained by them was rejected by the inquiry officer. Whether such denial is violative of the principles of natural justice or not is the question which is required to be considered by this Court. Whether such refusal has deprived the workmen from establishing the source of labour cards is also a question to be considered by this court. Whether the workmen were justified in making such demand or not is also a question arising for this Court's consideration. Whether the denial of such opportunity has caused any prejudice to the defence of the workmen or not is also a question for consideration of this court. In this back ground, allegations or charges levelled against the workmen are relevant. Therefore, identical charge levelled against one of the workmen Shri Ramkrupal J. Khalasi T No. 60653 of LOCO YARD Dahod vide charge sheet dated April 20, 1988 is reproduced as under:

"Based on the casual labour service card, produced by Shri Ramkrupal J., Khallasi, T.No.60653, Yard, Dahod, he was engaged as casual labour in Dahod workshop. On scrutiny of the said casual labour service card, produced by him, it is observed that the period of work with effect from 1.3.82 to 15.1.83 (in broken spells) during which Shri Ramkrupal J. is stated to have worked with APWI-Valsad, is false.

Thus, the appointment to the post of Khallasi is acquired by him purely on production of false document.

Thereby he has violated Rule 3(1)(i) & (iii) of Rly. Services (Conduct) Rules 1966."

16. In light of the above allegation or charge levelled against the workmen, the observations made by the Central Administrative Tribunal in its order dated July 16, 1998 passed in OA No. 69 of 1993 and other allied matters are material. Therefore, the observations made by the Tribunal in para 6, 7 and 8 of the order dated July 16, 1998 are reproduced as under:

"O.A.69/93 Date of Decision 16.7.1998

6. We have carefully considered the submissions of both sides. The main point urged by Mr.K.K.Shah is that it is not the stand of the applicants that they have worked at the place as shown in the service card but that such a service card was issued by the senior Railway officers in Dahod workshop where in fact they had worked. In getting the report from the concerned officers in Valsad and Abu Road that they had not issued the service card, the Railways had gone on the assumption that the service cards were bogus. However, it is not their claim that the applicants had forged or fabricated the cards. In fact the main defence of the applicants was that the cards were supplied by S/Shri R.P.Madan, P.D.Mishra, P.N.Mishra and Poolsinh. The applicants had made a specific request to summon them as witnesses so that they can substantiate their case. It is not clear as to the basis for the stand of the enquiry officer that the examination is not relevant when the applicants case rests on their assertion that the cards were supplied to them by these officers and obviously they would be important witnesses. We are also not aware of the details of the affidavit referred to by Mr.Shevde in respect of Shri Madan. In any case apart from Mr.Madan they were other persons whom the applicants wanted to be summoned. The fact that some allegations made in earlier cases were later on withdrawn cannot be a valid ground for refusing to summon these people in the face of categorical assertion of the applicants that they had been issued service cards by the Railway Admn. In any case the reason given by the enquiry officer to refuse to summon these people was that he hold that they were not relevant which finding is obviously incorrect. The Railway's stand is that the service cards are not genuine and it is not their contention that the applicants had in any way forged or fabricated cards. When the applicants

claimed that this had been issued to them by the Railway Officers and made a request to summon them as witnesses, it was necessary to call them so as to afford an opportunity to the applicants to substantiate their case.

7. In the circumstances, we hold that the refusal to call these four persons as witnesses has resulted in serious prejudice to the defence of the applicants and this alone is sufficient reason to hold that the penalty of removal from service cannot be sustained. In the normal course we would have remanded the matter back to the enquiry officer for continuing with the enquiry by summoning those persons and to give an opportunity to the applicants to substantiate their case. We note that the charge sheet was issued in 1988 and the present O.As have been filed in 1993 and a number of years have passed since then. We are informed by Mr.Shevde that one of them Mr.P.B.Mishra is no more. We also note that while disposing of O.A.329/90 on 13.11.97 the Tribunal held that in view of the facts and circumstances of the case and the time factor involved, it is not necessary to refer that case to the enquiry officer. It is true that in O.A. 202/93 the matter was remitted back to the enquiry officer but in that case the O.A was filed in 1993 and the judgment was rendered on 4.8.95 more than about three years back. In the circumstances we are inclined to agree with the suggestion of Mr.K.K.Shah that at this distance of time it will not be worthwhile to remand the matter back to the enquiry officer.

8. In the facts and circumstances of the case and following the decision of the Tribunal in O.A.329/90 we are of the view that it is not necessary to remand the case back to the enquiry officer and hold that the ends of justice will be met by setting aside the orders of disciplinary authority and the appellate authority as bad in law. We direct accordingly and further direct the respondents to reinstate the applicants as early as possible and in any case not later than eight weeks from the date of receipt of a copy of this order. We also hold that the applicants are not entitled to any back wages but the period from the date of removal of the applicants till the date they are reinstated shall count for the purpose of continuity in service for pension."

17. Considering the aforesaid observations made by the tribunal, it appears that the tribunal has given reasons in support of its conclusions about the demand of the workmen for cross examination of the four officers. The Tribunal found that the said four persons were important witnesses and refusal to summon said people in the face of categorical assertion of the workmen that they were given service card by them, reason given by the inquiry officer for refusal of such demand is obviously incorrect. Said order dated July 16, 1998 was challenged by the railway administration before this Court by filing special civil application no. 7942 of 1998 wherein this court passed order on April 9, 1999 and partly allowed the petition. So far as the reinstatement is concerned, the order was not disturbed by this Court. Direction as regards reinstatement was confirmed by this court. So far as the findings given by the tribunal vide order dated July 16, 1998 that the cross examination of four persons demanded by the workmen is relevant and having justification are concerned, such findings have also not been disturbed by this court and in view of the justification of such demand, liberty was given by this court in favour of the railway administration to hold inquiry after following the requirement of law and observance of the principles of natural justice if the railway administration so desire. Thus, the purpose of giving such liberty or chance to the railway administration was to see that the inquiry could be done in accordance with the principles of natural justice, since the demand of the workmen in that regard was found to be just and proper, such liberty was given to the railway administration for curing the defects which had appeared in the earlier proceedings but instead of curing the defect which had remained in the earlier proceedings, the inquiry officer considered as if it was open for him to verify the justification of such demand. In view of the observations made by the tribunal in its order dated July 8, 1998 not disturbed by this court while giving liberty in favour of the railway administration, the inquiry officer was not justified in examining or considering the justification of such demand. We are of the view that it was not open for the inquiry officer to examine the justification of such demand made by the workmen in view of the order of this court dated April 9, 1999 and, therefore, the tribunal was right in passing the orders in question and was also right in not granting second opportunity to the railway administration for curing the defects. Considering the order of this court

dated April 9, 1999, it is clear that there was no direction to hold inquiry but it was kept open for the railway administration to do so if it so wishes and then it was incumbent upon the railway administration to hold the inquiry in accordance with law and the principles of natural justice. Inspite of such opportunity given by this court to the railway administration, history was repeated and the railway administration again refused to cross examine the said four persons by cross examining whom, the workmen would have been able to establish the source of the labour card and thereby to establish that the same were not fake or forged as alleged since the said labour cards were given by the authorized officers of the railway administration under their signatures. Period mentioned in the labour card may be tallying or not with the original record but that was not written by the workmen in the card. Period of working mentioned or recorded in the labour card was written by the officers of the railway and not by the workmen. Therefore, there was no fault at all on the part of the workmen. They paid the amount of Rs.10000.00 as per affidavit dated January 8, 1990 towards the railway minister's fund and administrative fund and such amount was paid by the workmen in view of the demand made by the officers of the railway administration for issuing the labour card and, therefore, considering the facts on record and considering the charges levelled against the workmen, it is clear that the labour service ward was prepared including mentioning of working period (service period) by the officers of the railway under their signatures and after receiving the labour service cards, cases of the workmen were scrutinized by the railway authority, screening test was conducted, medical examination was carried out and thereafter, the workmen were appointed by the railway administration. These facts came to the notice of the railway administration after the period of more than four years from the date of appointment order issued in favour of the workmen. Therefore, in view of such glaring facts of the present case, the railway administration was not justified in rejecting the request of the workmen for summoning said four persons for their cross examination. We are also of the opinion that the inquiry officer was not justified in testing the justification of such demand and such refusal has deprived the workmen of reasonable opportunity for disproving the charge levelled against them. The inquiry officer is functioning under sub rule 19 of rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 which provides for the statement of defence of the delinquent and sub rule 20 is relating to the evidence to be adduced by the delinquent. It lays down as under:

"The evidence on behalf of the railway servant shall then be produced. The Railway servant may examine himself in his own behalf, if he so prefers. The witnesses produced by the Railway servant then be examined by or on behalf of him and shall be cross examined by or on behalf of the Presenting Officer, if any. The Railway servant shall be entitled to re examine the witnesses on any point on which they have been cross examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit."

18. Bare perusal of sub rule 20 makes it clear that it nowhere provides for the delinquent to justify the examination of the witnesses in his defence. Inquiry Officer is also not given any power to consider whether the evidence of the proposed witness is relevant or not. Inspite of this position of rule, the inquiry officer has raised question about the justification of the examination of said four persons and then took view that the examination of the said four persons is not relevant. We are, therefore, unable to understand under which provision and under which powers, the inquiry officer has formed such an opinion that the justification for examination of defence witnesses was necessary and that he was given a power to decide the relevancy or otherwise of such demand made by the workmen. We are also unable to understand how the inquiry officer concluded that how the four witnesses whom the workmen wanted to examine were not relevant for the purpose of examination. This can be done after he recorded the statements of said four persons. So, unless and until their statements are recorded, and their evidence are cross examined by the workmen, relevancy or otherwise of their evidence cannot be examined. Therefore, we are of the opinion that it was not open for the inquiry officer to conclude that their evidence was irrelevant. According to our considered opinion, relevancy of the examination of said four persons as demanded by the workmen is very natural since, right from the beginning, it was the stand of the workmen that they had received the labour service cards from the railway officer; said labour cards are bearing the signature of the officers of the railway officers and they are not fake or bogus as alleged. This shows that the demand of the workmen for cross examination of said four persons was relevant and refusal thereof has

deprived the workmen from establishing the source of labour card. Further, the original labour service cards were not produced and proved by the railway administration before the inquiry officer but xerox copies of such labour cards were on record before the inquiry officer and, therefore, whether the period mentioned in the service correct is correct or not can be explained only by the said four persons and yet the inquiry officer refused to call them before him for giving their evidence. Looking to the charges, details mentioned in the labour service card about the earlier working period is false and appointment to the post of Khalasi is acquired on production of fake document. Therefore, considering the charges, such charges can be proved or disproved only by examining the said four persons for the reason that the period of earlier service recorded in the labour card is correct or not and whether such cards are genuine or not can be answered only by said four persons and yet the inquiry officer chosen not to examine said four persons as a witness. Therefore, according to our opinion, request made by the workmen for cross examining said four persons was having proper justification and the refusal thereof by the inquiry officer has caused serious prejudice to the defence of the workmen. Therefore, according to our opinion, the conclusions drawn and the findings given by the tribunal in that regard are correct and the tribunal was right in concluding that such refusal has vitiated the further inquiry. We are also of the view that the tribunal has rightly rejected the plea of the railway administration for remanding the matter on the ground since the period of 20 years had passed. Once, such request was considered by this court and chance was given to the railway administration for curing the defects but instead of curing the defects, the inquiry officer rejected such request on the ground that there is no justification in such demand and, therefore, plea for remanding the matter was rightly rejected by the tribunal considering the plight of the poor casual labourers who are fighting for their right against the mighty railway administration. We, therefore, do not deem it fit to remand the matter back to the disciplinary authority or the inquiry officer. Workmen cannot be made to suffer agonies of hanging sword on their head for such a long period. As stated earlier, one workman has committed suicide during the pendency of the proceedings and if further chance is given, then, what would happen cannot be ignored by this court. Therefore, the contentions raised by Mr. Patel before this Court cannot be accepted. Charges were not admitted by any of the workmen. Affidavit dated January 8, 1990 is merely an admission of the workman as regards

fact as to how the labour service cards were received by them and it cannot be considered as an admission of the charges levelled against them for proving the charge against them. It is not the case of the railway administration that such cards are not bearing the signature of the railway officers. It is not a case of dispensing with the inquiry. It is the burden upon the railway administration to prove the charges levelled against the workmen and it has to be discharged by the railway administration. We are of the view that such burden has not been discharged by the railway administration. We are of the view that the railway administration has chosen something which is convenient for it to prove the charge and has ignored something which is not suitable for it to disprove the charge or which may go to disprove the charge. Being the State, Railway administration is not justified in adopting such an approach. Such an approach of the railway administration is violative of the principles of natural justice. It has caused serious prejudice to the defence of the workmen. Meaning of an inquiry is not an empty formality. It is having some substance. Principles of natural justice is the basic rule of law and it is necessary for the State to act in accordance with the principles of natural justice. If it is violated, then, that itself is enough to vitiate the inquiry. In view of that, considering the peculiar facts of the present case wherein the railway administration was given chance for curing the defect, the decisions cited at the Bar by the learned counsel Mr. Patel are not applicable to the facts of the present case. This aspect in detail discussed and considered by the Tribunal in para-[8]. The relevant para-8 is quoted as under :

"8. It can be seen from the bare reading of the above sub rule 20 that it nowhere provides for the delinquent to justify the examination of the witnesses in his defence. The inquiry officer is also not given any powers to consider whether the evidence of the proposed witnesses is relevant or not. In spite of this position, the inquiry officer has asked for the justification of the examination of these 4 witnesses and then taken a view that the examination of the witnesses is not relevant. We are unable to understand under which provision the inquiry officer had concluded that justification for examining the defence witness was necessary and that he was given a power to decide the relevancy or irrelevancy of a particular defence witnesses. We also fail to understand how the inquiry

officer had concluded that the 4 witnesses whom the applicants wanted to examine were not relevant for the purpose of inquiry. Unless and until he recorded their evidence, he could not have drawn any conclusion regarding the relevancy or irrelevancy of their evidence and hence it was not open for the inquiry officer to conclude that their evidence was irrelevant. The disciplinary authority unfortunately has also shut his eyes to this glaring defect in the inquiry proceedings, inspite of the fact that the Tribunal and the Hon'ble High Court had given specific direction in this regard. The disciplinary authority in every sentence of his order has mockingly used sentence that 'in pursuance to the directions of the Hon'ble High Court regarding the principle of natural justice the inquiry is conducted.' What is surprising is that the disciplinary authority has gone to the extent of stating in his order that the delinquents were asked whether they were willing to produce any witness or evidence in their defence and they had not produced any witnesses or evidence which would go to establish that their claim of work with PWI Valsad between dates 1.3.82 to 15.1.83 was correct. The disciplinary authority has conveniently forgotten that applicants had not only orally asked for the examination of the 4 witnesses who had appointed them but had also given in writing that they be called as their witnesses and be examined as their defence witnesses. It was the duty of the inquiry officer to summon those witnesses and examine them as the defence witnesses. The proceedings of the inquiry officer dated 4.10.99 suggest that the delinquent was asked about the defence witnesses or production of the evidence and the delinquent had replied that he wanted to examine :-

1. Mr.R.P.Madan
2. Mr.P.D.Mishra
3. Mr.P.N.Mishra and
4. Mr.Phool Singh

Admittedly, these witnesses were not summoned and not examined as the defence witnesses by the inquiry officer. In spite of this position, the disciplinary authority in his order has gone to the extent of saying that the delinquent had not produced any witnesses or not produced any evidence in support of their case and that the

inquiry was conducted in compliance with the principles of natural justice and in compliance with the directions given by the Hon'ble High Court. In view of non production of any evidence by the delinquent, the charges leveled against them were treated as proved. The disciplinary authority has also not considered that the Tribunal had already held in the earlier challenge of the orders that the examination of the 4 witnesses cited by the delinquent was necessary and that their non examination had clearly vitiated the whole inquiry proceedings. We find that in spite of the directions of the Tribunal as well as Hon'ble High Court the inquiry officer as well as the disciplinary authority have not mended their ways and have not thought fit to give an opportunity to the defence to examine those witnesses. The conclusion is therefore inevitable that their refusal to allow the applicants to examine those witnesses has clearly vitiated the fresh inquiry also. When pointed out, Mr.R.N.Singh learned counsel for the respondents has prayed for the remand of the matter back to the inquiry officer. We note that earlier in O.A. No.69 of 93 and other O.A.s the Tribunal had refused to remand the matter to the disciplinary authority on the ground that it had been long time that the inquiry was continuing against these poor persons. The Hon'ble High Court had however considered that request and remanded the matter. The result has however been the same. Neither the inquiry officer nor the disciplinary authority has shown any consideration for the plight of this lowly paid employees of the Railways. We had therefore shown inclination to remand the matter to the inquiry officer on condition that the backwages of all these applicants will be borne by the disciplinary authority. Mr.Singh has however not agreed to this suggestion. We therefore do not deem it fit to remand the matter back again to the disciplinary authority or inquiry officer. The applicants cannot be made to suffer the agonies of hanging swords on their head for such a long period. For no fault of their, the inquiry officer as well as the disciplinary authority have without any concern whatsoever about their fate and the inquiry proceedings itself, continued to behave in most arbitrary manner and placed them in a pitiable condition. Least said is better so far appellate authorities

of the Railways are concerned as we have come across so many disciplinary cases where the appellate authorities have acted mechanically and without application of mine. Had the appellate authority considered the directions given by the Tribunal as well as the Hon'ble High Court, perhaps he could have retrieved the situation to some extent by remanding the matter back tot he disciplinary authority but unfortunately he also has not taken any trouble to even read the judgment of the Tribunal and the Hon'ble High Court."

19. What is the scope of departmental inquiry, what is the legal departmental inquiry, what are the elements of such inquiry, all these aspects were examined by the apex court in two cases. In case of MEENGLAS TEA ESTATE V. THE WORKMEN reported in 1963 SC 1719, apex court observed as under in para 4:

"4. The Tribunal held that the enquiry was vitiated because it was not held in accordance with the principles of natural justice. It is contended that this conclusion was erroneous. But we have no doubt about its correctness. The enquiry consisted of putting questions to each workman in turn. No witness was examined in support of the charge before the workman was, questioned. It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirements must be substantially fulfilled before the result of the enquiry can be accepted. A departure from this requirement in effect throws the burden upon the person charged to repel the charge without first making it out against him. In the present case neither was any witness examined nor was any statement made by any witness tendered in evidence. The enquiry, such as it was, was made by Mr. Marshall or Mr. Nichols who were not only in the position of judges but also of

prosecutors and witnesses. There Was no opportunity to the persons charged to cross-examine them and indeed they drew upon their own knowledge of the incident and instead cross-examined the persons charged. This was such a travesty of the principles of natural justice that the Tribunal was justified in rejecting the findings and asking the Company to prove the allegation against each workman de novo before it. "

In SUR ENAMEL AND STAMPING WORKS V. THE WORKMEN [AIR 1963 SC 1914], the apex court observed as under in para 4:

"[4] xxx xxxxx xxxxx xxx This attitude is wholly misconceived. An enquiry cannot be said to have been properly held unless, (i) the employee proceeded against has been informed clearly of the charges levelled against him,(ii) the witnesses are examined--ordinarily in the presence of the employee-in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer records his findings with reasons for the same in his report. In the present case the persons whose statements made behind the backs of the employees were used by the enquiring authority were not made available for cross-examination but it would appear that they were not even present at the enquiry. It does not even appear that these reports were made available to the employee at any time before the enquiry was held. Even if the persons who made the reports had been present and the employee given an opportunity to cross-examine them, it would have been difficult to say in these circumstances that was a fair and sufficient opportunity. But in this case it appears that the persons who made the reports did not attend the enquiry at all. From whatever aspect the matter is examined it is clear that there was no enquiry worth the name and the Tribunal was justified in entirely ignoring the conclusion reached by the domestic Tribunal."

In Canara Bank v/s. Debasis Das [2003 SCC (L&S)

In Canara Bank v/s. Debasis Das [2003 SCC (L&S) page 507], the apex court observed as under in para 13 to 16 :

"13. Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

14. The expressions "natural justice" and "legal justice" do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant's defence.

15. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him.

This is one of the most important principle of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate, interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works the principle was thus stated: (ER p.420)

"[E]ven God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam' (says God), 'whereart thou? Hast thou not eaten of the tree whereof, I commanded thee that thou shouldest not eat?'"

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

16. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice."

21. Therefore, considering the observations made by the apex court in the aforesaid decisions in light of the facts of the present case and considering the substance of the departmental inquiry, we are of the clear view that the refusal for cross examination of said four persons as demanded by the workmen is amounting to denial of reasonable opportunity to the workmen which caused serious prejudice to the defence of the workmen. Inspite of two round of litigation, in third round also, the railway administration is taking the same stand which amounts to colourable exercise of the powers and to have attitude to save four officers from any disciplinary action. Therefore, tribunal has rightly granted the relief of reinstatement and in rejecting the request for remand and in view of our findings, the petitions filed by the Railway administration are required to be

dismissed with costs.

22. The contentions raised by Mr.Patel examined by us. The decisions relied also, perused by us. In view of above observations, contentions raised by Mr.Patel not accepted. The decisions are also not applicable to the facts of the present case. The contentions raised in the affidavit-in-reply and additional affidavit-in-reply by Railway unless pressed into service before the Tribunal, Tribunal cannot consider the same. In order, Para-4 the submissions were made by the Railway. Except that, no submission made by the Railway before the Tribunal. If the Railway having any dispute about it, then normal and legal course would be to file review application before the Tribunal. But no such application made by the Railway. The law on this point examined by the Apex Court in para-4 in case of STATE OF MAHARASHTRA V. RAMDAS SHRINIVAS NAYAK AND ANOTHER reported in 1982 SC 1249 is referred as under :

"4. When we drew the attention of the learned Attorney General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation".(Per Lord Atkinson in Somasundaran v. Subramanian, AIR 1926 PC 136). We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such

statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. (Per Lord Buckmaster in Madhusudan v. Chandrabati, AIR 1917 PC 30). That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an Appellate Court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.

4-A In Rev. Mellor, 7 Cox. P.C. 454 Martin was reported to have said: "we must consider the statement of the learned judge as absolute verity and we ought to take his statement precisely as a record and act on it in the same manner as on a record of Court which of itself implies an absolute verity".

Even in case of DAMAN SINGH AND OTHER V. STATE OF PUNJAB AND OTHERS reported in AIR 1985 SC 973, the Apex Court in para-13 has observed as under :

"13. The final submission of Shri Ramamurthi was that several other questions were raised in the writ petition before the High Court but they were not considered. We attach no significance to this submission. It is not unusual for parties and counsel to raise innumerable grounds in the petitions and memoranda of appeal etc., but, later, confine themselves, in the course of argument to a few only of those grounds, obviously because the rest of the grounds are considered even by them to be untenable. No party or counsel is thereafter entitled to make a grievance that the grounds not argued were not considered. If indeed any ground which was argued was not considered it should be open to the party aggrieved to draw the attention of the court making the order to it by filing a proper application for review or clarification. The

time of the superior courts is not to be wasted in inquiring into the question whether , a certain ground to which no reference is found in the judgment of the subordinate court was argued before that court or not ?

In view of the decisions of the Apex Court, the contentions raised by Mr.Patel are rejected.

23. Now, we are examining the contention raised by Mr. Shah about denial of back wages. While granting relief, the tribunal has not at all discussed the issue as regards back wages in the entire body of the judgment. The tribunal has not given any reason for denial of the 50 per cent of the back wages. It shows non application of mind on the part of the tribunal. The railway administration has not proved any exceptional circumstance to justify denial of 50 per cent of the back wages. No such contention was raised by the railway administration before the tribunal or before this court in respect of the back wages. Merely without any rational basis, irrationally, the tribunal has declined to grant full back wages and granted only 50 per cent of the back wages which is not proper according to law. The workmen have remained without work because of the illegal order passed by the railway administration. Order of removal is passed contrary to the principles of natural justice. Before this Court also, Mr. Patel has not submitted anything about the gainful employment of the workmen during the intervening period. One workman Jagdish Chandra has committed suicide because of the starvation. The workmen have remained without work since January, 2000 till this date. Though order of reinstatement has been passed, they were not reinstated in service. These are all class IV employees who are coming from the poor and weaker section of the society. Earlier also, in the same case, for avoiding unemployment, the workmen had not pressed the issue of back wages and they had not pressed the back wages for the period from 1992 to 1998 but the workmen were again removed contrary to the principles of natural justice. The workmen have been deprived of their right to work; though they were ready and willing to work, they were removed from service contrary to the principles of natural justice and therefore, relief of full back wages is the normal and natural relief. This aspect has been examined by the apex court in M/S HINDUSTAN TIN WORKS PVT LTD. V. THE EMPLOYEES OF M/S HINDUSTAN TIN WORKS PVT LTD AND OTHERS [AIR 1979 SC 75]. In para 9 of the judgment, the apex court observed as under:

"9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to the work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived deprived workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore. a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigating activity of the employer. If the D employer terminates the service illegally and the termination is motivated as in this case, viz ., to resist the workman's demand for revision of wages. the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages.

Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavored to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it the were forced to litigation upto the apex Court and now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workman were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workman were always ready to work but they were kept away therefrom on account of invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them. A Division Bench of the Gujarat High Court in Dhari Gram Panchayat v. Safai Kamldar Mandal(1), and a Division Bench of the Allahabad (1) 11-971] I Labour Law Journal 508 and a Division Bench of the Allahabad High Court in Postal Seals Industrial Co-operative Society Ltd. v. Labour Court 11, Lucknow & ors.(l), have taken this view and we are of the opinion that the view taken therein is correct."

In Union of India v. Madhusudan Prasad [2004 (1) SCC page 43, the apex court observed as under in para 5 and 6:

"5. It is true that when a reinstatement is ordered in appeal or review, the authorities can pass specific order regarding the pay and allowances to be paid to the government servant for the period of his absence from duty preceding the dismissal, removal or compulsory retirement, as the case may be. This is an enabling provision and the authorities can consider the relevant facts as to whether the employee should be denied the salary for the period he was kept under suspension preceding the removal, dismissal or compulsory retirement. The counsel for the

appellant has placed reliance on the decision of the Constitution Bench of this Court in Managing Director, ECIL v. B.Karunakar where this Court held that the question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement, if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceeding and depending on the final outcome. If the employee succeeds in the fresh enquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any, and the extend of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the enquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh enquiry from the stage of furnishing the report and no more, where such fresh inquiry is held.

6. The above case was concerning an employee, who was found guilty in an enquiry but the report was not furnished to the employee and the show-cause notice was not served on him. In view of the facts and circumstances of the case, the Court directed that appropriate order should be passed regarding the back wages. In the instant case, the Appellate Authority directed reinstatement of the respondent and held that he was not entitled to get back wages for the period he was out of service. It may be noticed that the respondent was removed from service without any enquiry and he was not even given a show-cause notice prior to his dismissal from service. There was fault on the part of the employer in not following the principle of natural justice. These relevant facts were considered and the learned Single Judge and also the Division Bench ordered the payment of back wages. We do not think this is a fit case where Fundamental Rule 54 could have been invoked by the authorities. We find no merit in the appeal. The appeal is accordingly dismissed."

24. One decision has been cited by Mr. Shah at the Bar in Sher Bahadur v. Union of India & Ors.[2002 SCC (L&S) 1028]. We have also considered the said decision.

The said decision is based on similar facts of the present case. In para 7 of the said decision, the apex court observed as under:

> 7. It may be observed that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, " in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle satisfy the rule of sufficiency of evidence. Though, the disciplinary authority cited once witness Shri R.A.Vashist, Ex.CVI/Northern Railway, New Delhi, in support of the charges, he was not examined. Regarding documentary evidence, Ext. P-1, referred to in the enquiry reported and adverted to by the High Court, is the order of appointment of the appellant which is a neutral fact. The enquiry officer examined the charged officer but nothing is elicited to connect him with the charge. The statement of the appellant recorded by the enquiry officer shows no more than his working earlier to his re-engagement during the period between May 1978 and November 1979 in different phases. Indeed, his statement was not relied upon by the enquiry officer. The finding of the enquiry officer that in view of the oral, documentary and circumstantial evidence, the charge against the appellant for securing the fraudulent appointment letter duly signed by the said APO (Const.) was proved, is, in the light of the above discussion, erroneous. In our view, this is clearly a case of finding the appellant guilty of charge without having any evidence to link the appellant with the alleged misconduct. The High Court did not consider this aspect in its proper perspective as such the judgment and order of the High Court and the order of the disciplinary authority, under challenge, cannot be sustained, they are accordingly set aside."

25. Lastly, equal treatment has not been given by the Railway administration to the present workmen and the discriminatory treatment has been given in holding the

departmental inquiry against these workmen. The observations made by the Railway authority in letter dated April 8, 1994 of GM (P) HQ Office, Central Workshop, Railway Electrification, Allahabad are relevant and material in the facts of the present case. Same are, therefore, reproduced as under:

> "Six years have passed and I see no point in trying to dis-engage these casual labourers at this distant date. It is only natural that since they have secured employment through wrongful means they should not be eligible for benefit of service as others who have been engaged on genuine grounds. In the circumstances their seniority should be fixed below all the other casual labourers.
>
> I hereby record my post-facto approval for engagement of these 62 casual labourers with the proviso that their seniority will rank below the rest of the casual labourers of the project who have been engaged on or before the date of individual dates of engagement of these 62 men maintaining their interse seniority as per rules.
>
> Action already planned against officers/supervisors who engaged them without proper verification may continue and should be finalised quickly....."

26. Thus, said 62 casual labourers who were facing the same and similar charge were taken back in service without any inquiry and it is the defence of the railway administration that they were working in different department of the railway. However, we are considering that the Railway is one, it might be having various departments but the policy for railway authority must remain same. In view of the above discussion and considering the entire matter, we are of the opinion that the tribunal has committed an error in not granting full back wages. Therefore, the petitions filed by the railway administration against the order of the tribunal in question are required to be dismissed. Petitions filed by the workmen claiming for full back wages are required to be allowed.

27. Accordingly, the petitions filed by the petitioners, Union of India against the order of the tribunal in question are dismissed with costs, quantified

at Rs.3,000.00 per workman. Petitions filed by the workmen are allowed. Accordingly, the order of the tribunal is modified to the effect that the workmen are entitled for full back wages for the intervening period from the date of their removal till the date of their reinstatement.

28. Railway administration is directed to reinstate the workmen concerned in service with continuity of service and full back wages for the intervening period with all other consequential benefits as if the workmen were never removed from service. Railway administration is directed to comply with these directions by reinstating the workmen in service with full back wages within two months from the date of receipt of Kachha copy of this order.

29. Rule is discharged in the petitions filed by the Railway administration. Rule is made absolute in the petitions filed by the workmen.

[BHAWANI SINGH]
CHIEF JUSTICE

[H.K.RATHOD]
JUDGE

#vyas/kailash/smita#